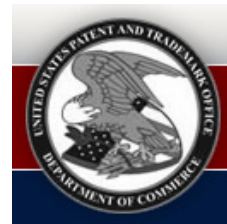




INTERNATIONAL
TRADE
ADMINISTRATION

China IPR News for U.S. Industry June 6, 2008



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PATENTS

1. CBA and BIO Host Joint Program on Bio-Technology: In Shanghai on May 28, the Chinese Biopharmaceutical Association (CBA) and the Biotechnology Industry Organization (BIO) co-hosted a program on bio-technology entrepreneurship and outsourcing considerations. James Greenwood, BIO's President and Chief Executive Officer, and former U.S. House Representative from Pennsylvania, received an award from the CBA and made remarks. (Source: <http://www.bio-forum.com/en/index.asp>.)

2. Zhongshan Court Imposes Enhanced Damages for Repeat Design-Patent Infringer: The Zhongshan Intermediate Court in Guangdong Province awarded significant damages to a design-

patent holder whose rights had been infringed upon repeatedly by the same offender. The court ordered Guangdong Jinlida, a medical appliance company, to pay Zhangjie, the patent holder, RMB 250,000 in compensatory damages and RMB 22,898 in costs for infringing the design patent. In 2005, another court found that Jinlida infringed the same patent, and ordered the company to pay RMB 10,000 to Zhangjie. Jinlida, however, continued its infringing activities, making it difficult for Zhangjie to license its patent. The court ruled that Jinlida's unceasing misbehavior warranted a high damage judgment for repeated infringement. (Chinese Source: *China IP News*, Page 8, May 28, 2008.)

[Note: Enforcement of court judgments historically has been a major weakness in China's civil-law system. In the past, punitive measures have been used, such as imposing criminal penalties for willful infringement when parties do not comply with damage decisions. This case may be one indication of improvement in civil deterrence, although even damages totaling RMB 250,000 are quite low by U.S. standards. End note.]

3. Yunnan Embarks on Development of Pharmaceutical Industry through Patent Strategy:

Officials in Yunnan Province have devised an Outline of Patent Strategy for Yunnan Traditional Chinese Medicine (TCM) to promote the development of Yunnan's pharmaceutical industry. Yunnan Province has 3,585 medicines registered, of which 1,953 are TCM types, accounting for more than 50%. As of December 2007, there were 9,460 patent applications related to critical technology in China's pharmaceutical industry, among which 8,541 were invention-patent applications. Among these pending applications were 391 applications from Yunnan, of which 326 were invention-patent applications. (Chinese Source: *China IP News*, Page 10, May 28, 2008.)

[Note: China traditionally has dominated domestically in patent applications for traditional

Chinese medicine. Yunnan Province hosted an early PTO program on traditional knowledge, genetic resources, and folklore. End note.]

4. Yiwu's "Well-Known Brand Product Association" Protects its Members' Own: The Yiwu Well-Known Brand Product Association has become an international IPR protection association, consisting of 226 brands of 176 members from China and other countries, such as the U.S., the U.K., France, Germany, Japan, and Korea. (The city of Yiwu is in Zhejiang province.) In 2007, with the help of the Association, local enforcement agencies initiated 439 cases involving RMB 8,580,000, seized goods with a value of RMB 5,300,000, and transferred 17 cases to criminal enforcement agencies. (Chinese Source: http://www.sipo.gov.cn/sipo2008/mjji/2008/200806/t20080602_404976.html, June 2, 2008.)

[Note: During the past several years, Yiwu authorities have identified this association to visiting USG officials. The Association meets periodically with Yiwu authorities. End note.]

COPYRIGHTS

5. Burning CDs and DVDs on the Street: Copyright Protection Gets Tougher in the Digital Age: Piracy of music and film is encountering another challenge: the mobile sidewalk or roadside infringer who burns CDs and DVDs to order on a laptop. The threshold for imposing Chinese copyright-infringement law is illegal profits totaling over RMB 30,000 and illegal reproductions in excess of 500 units. If these criteria are not met, no infringement is deemed to have occurred. The matter would be handled as a civil tort case, resulting in administrative, as opposed to criminal, sanction. Since the infringer is highly mobile, though, even administrative punishment is difficult to impose. While the digital age has brought instantaneous access to a plethora of information, it also has exposed the antiquated nature of current copyright laws and penalty thresholds. Criminalizing the infringing behavior is one possible solution. The author opines that the most effective protection against infringement is public awareness and consciousness of, and respect for, intellectual property rights. (Source: *China IP News*, May 23, 2008, Page 11.)

6. Joint Sino-Foreign Music Industry Establishes Alliance Vowing to Escalate Fight against Baidu Piracy: In Beijing on June 3, the Music Copyright Society of China (MCSC), the China Audio-Video Copyright Association (CAVCA), the International Federation of the Phonographic Industry (IFPI), and others in the copyright field held a joint media conference, calling on all major corporations,

including the advertising industry, "to support copyright through practical action, and avoid providing any direct or indirect financial support to copyright infringers, [and] in so doing, also prevent their own brand equity from being misused and diluted by these pirates in any way." This statement is not only the first joint cooperation between the three associations, but also represents the first integrated public representation of publishing and recording rights holders, with wide support from domestic and international music companies. The content involved covers more than 80% of the total Chinese music market, and also includes a significant portion of international mainstream music.

This action is the extension and continuation of the previous anti-piracy fight against Baidu that the music industry initiated earlier. (See http://www.ifpi.org/content/section_news/20080407.html.) Since January 2008, MCSC, Universal Music, Warner Music and Sony BMG have commenced a series of anti-piracy actions against Baidu for piracy. Separately, on May 16, R2G, a digital music distribution and licensing company, initiated suit against Baidu in the Beijing Haidian District People's Court following Baidu's inaction to R2G's take-down notices concerning infringing web links. (Source: <http://cinema.beelink.com.cn/20080604/2533722.shtml>.)

7. IFPI Expresses Appreciation to Hebei Copyright Bureau for Fighting Infringement of On-Line Software Company: The International Federation of the Phonographic Industry (IFPI) noted its appreciation to the Copyright Bureau of Hebei Province for its efforts in combating infringing activities. In December 2007, IFPI filed administrative complaints against nine websites which provided music for downloading without charge. In March 2008, the Hebei Copyright Bureau and the Copyright Bureau of Cangzhou City discovered and seized three servers belonging to Beijing Zhongsuo On-Line Software Ltd. Co. (Zhongsuo On-Line) containing 138 pirated songs. On April 29, the Copyright Bureau of Cangzhou City issued an administrative punishment decision against "Zhongsuo On-Line," requiring it to stop the infringing activity and levying a fine of RMB 100,000. (Source: *China Press and Publication Journal*, May 30, 2008, Page 7.)

[Note: The website www.zhongsuo.com, which "Zhongsuo On-Line" operates, is one of the larger search engines in China. End note.]

8. When Does Infringement Occur in the Digital Age? Differences in Interpretation, and the Battle over VOD Rights Protection: A recent case in Yunnan Province has highlighted the difficulties of

using measure phrases, such as “one disc” or “one record,” versus the use of Chinese measure words “zhang” and “fen” in judicial interpretations concerning IPR criminal thresholds in the digital context. “Zhang” is the Chinese measure word for a flat object such as a compact disc. “Fen” is the Chinese measure word for a copy of an item. The 2007 Judicial Interpretation criminalizes 500 “zhang” or “fen,” using them as units of measure, and not “songs” or “movies” or harm to the rights holder. The difference between English and Chinese units of measure has created a conundrum concerning when infringement has occurred in the digital age.

Karaoke has become a very popular form of entertainment in China. Recently, however, the China Audio and Video Association (CAVA) and Music Copyright Society of China (MCSC) have determined that video-on-demand (VOD) Karaoke system producers have been infringing on music copyrights. These VOD producers simply use a music library without paying the rights holder a royalty fee. In December 2007, CAVA and MCSC filed suit against VOD infringement in Yunnan and Hunan Provinces. However, the action unearthed a significant semantic enforcement problem: How to convert a “song” in a digitalized music library to the “Zhang/Fen” in the Judicial Interpretation of the copyright law. This translation issue remains unresolved in the law and with the industry. As a result, further criminal prosecutions have been halted, as legal experts and scholars debate the proper definitions of measure. (Source: *China Press and Publication Journal*, May 9, 2008, Page 7.)

9. Music Companies Sue Sohu for Copyright Infringement, and Reportedly Accuse IOC of Double Standard: The world's leading music companies have accused the International Olympic Committee (IOC) of encouraging copyright piracy after a commercial partner of the Beijing Games disregarded demands to shut down its illegal music-downloading service. Sony BMG, EMI, Warner Music and Universal have filed suit against Sohu, one of China's most popular web sites, charging it with facilitating illegal music downloads without charge. Sohu is the official internet service provider of the Beijing Olympic Games, and, by extension, is an agent of the IOC, the fundamental Olympic rights holder. The companies allege that the IOC perpetuates a double standard, simultaneously operating the Olympic Games while protecting its own brand at the expense of others. (Source: http://business.timesonline.co.uk/tol/business/industry_sectors/media/article4022834.ece.)

TRADEMARKS

10. Sell Counterfeit Shampoo in Jiangxi Province? Go to Prison for Three Years: On May 28, the Xihu District People's Court in Nanchang, Jiangxi Province, convicted Xu Jin of selling counterfeit shampoo in Nanchang, and selling commodities bearing counterfeit trademarks, imposing a three-year sentence and a fine. From April to December 2007, Xu sold 1,858 cases of shampoo and bath lotion to nine distributors in Hongcheng Market in Nanchang, all bearing counterfeit trademarks, including Rejoice, Pantene, Olay, and Lux. Xu netted RMB 152,941 from the illegal sales. On December 3, 2007, the Qingyunpu District Bureau of Quality and Technical Supervision seized a large amount of counterfeit shampoo and bath lotion in Xu's warehouse, valued at RMB 248,826. (Source: <http://www.chinantd.com/en/en-newsshow.asp?id=789>.)

11. Ritz Hotel Wins Trademark-Infringement Case: The Ritz Hotel Limited sued Shanghai Rits Fitness Co. Ltd. and affiliated companies for trademark infringement, alleging that the fitness company misappropriated the hotel trademark for use with sauna and massage services. On April 21, the Shanghai Second Intermediate People's Court held that the Shanghai Rits Fitness Co. Ltd. and its affiliated companies infringed on the trademark of The Ritz Hotel Limited. The court ordered Shanghai Rits Fitness pay RMB 200,000 to the Ritz Hotel.

Defendants argued that another associated company, Xiamen Rits Entertainment Co. Ltd., started using the mark "RITS and device" in 2000, and, therefore, should receive priority in usage of the mark. The court, however, determined that Ritz Hotel Limited had registered the mark "LE RITZ" in 1993, seven years prior to the time when Xiamen Rits started using its phonetic equivalent. The court held that the marks were similar, and defendants' sauna and massage services were similar to the hotel services of the trademark registrant, constituting trademark infringement. (Source: <http://www.chinantd.com/en/en-newsshow.asp?id=771>.)
